

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Arambula

February 26, 2009

An act to add Section 273 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as amended, Arambula. Employment regulation and supervision: unpaid wages.

Existing law provides for the regulation of farm labor contractors and of garment manufacturers by the Labor Commissioner and for their licensure and registration, respectively, by the commissioner.

This bill would require an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement under penalty of perjury as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, as defined, a final order issued by the commissioner, or an accord. The bill would require the commissioner to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or cash deposit to guarantee payment of the wages or a notarized accord demonstrating satisfaction of the obligation. The bill would require the commissioner to suspend the license or registration of a farm labor contractor or a garment manufacturer who made a false representation in the statement and would make reinstatement contingent on the applicant demonstrating compliance with the unpaid wages requirements or submitting an accord showing satisfaction of that obligation. The bill would require a licensee or

registrant to notify the commissioner within 90 days of a final court judgment, final order issued by the commissioner, or an accord imposing requirements relating to unpaid wages and submit with the notice security, as previously described, for the unpaid wages. The bill would prohibit a licensee or registrant from having a person who is a named judgment debtor in a final court order or order issued by the commissioner for unpaid wages serving in a key personnel capacity and would require the commissioner to suspend the license or registration of a person who violates this prohibition. The bill would require a licensee or registrant to pay to the Labor Commissioner all reasonable costs incurred in suspension proceedings under its provisions.

Because the bill would require representations in the statement by the applicant to be made under penalty of perjury, it would impose a state-mandated local program by expanding the crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 273 is added to the Labor Code, to read:
- 2 273. (a) The following definitions apply for purposes of this
- 3 section:
- 4 (1) "Farm labor contractor" has the same meaning as set forth
- 5 in Section 1682.
- 6 (2) "Final judgment issued by a court" means a judgment with
- 7 respect to which all possibility of a direct attack, by way of appeal,
- 8 motion for a new trial, or motion pursuant to Section 663 of the
- 9 Code of Civil Procedure to vacate the judgment, has been
- 10 exhausted and also includes any final arbitration award where the
- 11 time to file a petition for a trial de novo or a petition to vacate or
- 12 correct the arbitration award has expired, and no petition is
- 13 pending.
- 14 (3) "Garment manufacturer" means a person engaged in garment
- 15 manufacturing as described in Section 2671.

1 (4) “*Involving unpaid wages*” means all amounts required to
2 be paid by a final judgment, order, or accord involving a failure
3 of the licensee or registrant to pay required wages.

4 ~~(4)~~

5 (5) “Licensee” has the same meaning as set forth in Section
6 1682.

7 ~~(5)~~

8 (6) “Registrant” means a person who holds a valid and
9 unrevoked garment manufacturer registration.

10 (b) The Labor Commissioner shall require an applicant for any
11 of the following to submit a statement under penalty of perjury as
12 to whether the applicant has satisfied all requirements ~~involving~~
13 ~~unpaid wages~~ imposed by a final judgment issued by a court or by
14 a final order issued by the Labor Commissioner or by an accord
15 *involving unpaid wages*:

16 (1) Licensure as a farm labor contractor.

17 (2) Registration as a garment manufacturer.

18 (3) Renewal or reinstatement of a farm labor contractor license
19 or a garment manufacturer registration.

20 (4) A change in the persons identified pursuant to Section 1689
21 or subparagraph (B) of paragraph (1) of subdivision (a) of Section
22 2675.

23 (c) Notwithstanding any other provision of law, the Labor
24 Commissioner shall not approve an application described in
25 subdivision (b) if the statement submitted with it shows that the
26 applicant has failed to satisfy all requirements *imposed by a final*
27 *judgment issued by a court or by a final order issued by the Labor*
28 *Commissioner or by an accord* involving unpaid wages, as
29 described in subdivision (b), unless the applicant submits either
30 of the following to the Labor Commissioner:

31 (1) A bond or a cash deposit, in addition to any required by
32 Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient
33 to guarantee payment of ~~the all amounts due under a final judgment~~
34 *issued by a court or by a final order issued by the Labor*
35 *Commissioner involving* unpaid wages.

36 (2) A notarized accord between the applicant and the other
37 parties to the judgment, order, or accord demonstrating that the
38 applicant has satisfied all requirements ~~involving unpaid wages~~
39 imposed by the judgment, order, or accord *involving unpaid wages*.

(d) Notwithstanding any other provision of law, if the Labor Commissioner determines after granting an application described in subdivision (b), that the applicant made a false representation on the statement he or she submitted, the Labor Commissioner shall suspend the farm labor contractor license or garment manufacturer registration effective on the date of its issuance, renewal, or reinstatement. The license or registration shall remain suspended until the applicant satisfies either of the following requirements:

(1) Documents to the satisfaction of the Labor Commissioner that he or she has satisfied all requirements ~~involving unpaid wages~~ imposed by a final judgment issued by a court or by a final order of the Labor Commissioner or by an accord *involving unpaid wages*.

(2) Files with the Labor Commissioner a notarized accord as described in paragraph (2) of subdivision (c).

(e) (1) A licensee or registrant shall notify the Labor Commissioner in writing within 90 days of the date of a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord that imposes on the licensee or registrant requirements involving unpaid wages. If the licensee or registrant fails to comply with this notification requirement, the Labor Commissioner shall suspend the license or registration on the date that the Labor Commissioner is informed, or is made aware of, the judgment, order, or accord. The suspension shall remain in effect until the licensee or registrant satisfies either of the requirements described in subdivision (d).

(2) A licensee or registrant who notifies the Labor Commissioner of a judgment, order, or accord pursuant to paragraph (1), shall file with the notice a bond or a cash deposit meeting the criteria of paragraph (1) of subdivision (c).

(f) (1) The Labor Commissioner may reduce the amount of a bond or cash deposit required by this section upon proof, to the satisfaction of the Labor Commissioner, of partial satisfaction of the requirements ~~involving unpaid wages~~ imposed by a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord *involving unpaid wages*. The Labor Commissioner shall not reduce the bond or cash deposit amount below the ~~unpaid wage balance~~ *balance of the entire amount involving unpaid wages*. Upon full satisfaction of the requirements

1 involving unpaid wages, the Labor Commissioner may terminate
2 the bond or cash deposit requirement.

3 (2) Notwithstanding paragraph (1), within one year from the
4 date of filing the bond or cash deposit pursuant to paragraph (1)
5 of subdivision (c) or paragraph (2) of subdivision (e), the applicant
6 shall submit a notarized accord between the applicant and the other
7 parties to the judgment, order, or accord demonstrating that he or
8 she has satisfied all requirements ~~involving unpaid wages~~ imposed
9 by the judgment, order, or accord *involving unpaid wages*. The
10 Labor Commissioner shall suspend the license or registration of
11 a person who fails to file the notarized accord within that
12 timeframe. *Notwithstanding paragraph (1) of subdivision (c), a*
13 *person who has failed to file a notarized accord within the*
14 *timeframe required by subdivision (f) shall have his or her license*
15 *or registration reinstated only after demonstrating that he or she*
16 *has satisfied all requirements imposed by a final judgment, order,*
17 *or accord involving unpaid wages. As an alternative to payment*
18 *in full of all debts involving unpaid wages, a person may submit*
19 *a notarized copy of an accord between the licensee or registrant*
20 *and the other parties to the accord.*

21 (g) The failure of a licensee or registrant to maintain a bond
22 required by this section *or to abide by all requirements imposed*
23 *on a licensee or registrant by an accord involving unpaid wages*
24 *between the licensee or registrant and the other parties to the*
25 *accord* shall result in the automatic suspension of his or her license
26 or registration.

27 (h) (1) A licensee or registrant shall not allow a person who is
28 a judgment debtor in a final judgment issued by a court or in a
29 final order issued by the Labor Commissioner *involving unpaid*
30 *wages* that imposes requirements that have not been satisfied in
31 their entirety ~~involving unpaid wages~~ to serve in a capacity
32 described in Section 1689 or subparagraph (B) of paragraph (1)
33 of subdivision (a) of Section 2675.

34 (2) The Labor Commissioner shall suspend the license of a farm
35 labor contractor or the registration of a garment manufacturer who
36 violates the provisions of paragraph (1). The Labor Commissioner
37 shall reinstate the license or registration upon the resignation of
38 the person named as a judgment debtor or complete satisfaction
39 of the unpaid wages requirements.

1 (i) A person whose license or registration is suspended pursuant
2 to this section shall pay to the Labor Commissioner all reasonable
3 costs incurred by the Labor Commissioner in *all* proceedings
4 relating to the suspension. *The Labor Commissioner shall not*
5 *reinstate a license or registration unless the person has paid all*
6 *costs assessed by the Labor Commissioner or has entered into an*
7 *accord with the Labor Commissioner that establishes a payment*
8 *plan.*

9 (j) This section shall not apply to an applicant for a farm labor
10 contractor license or a garment manufacturer registration or to a
11 licensee or registrant when the unpaid wages, as described by this
12 section, have been discharged in a bankruptcy proceeding.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.